

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/12/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION (P.D.) No.1227 OF 2003

G.Mary Suseela ... Petitioner

-Vs-

1.Micheal

2.Mariadas ... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure for the relief as stated therein.

For petitioner : Mr.K.N.Thambi

For 1st respondent: Mr.V.G.Vel

:O R D E R

The above civil revision petition has been filed under Section 115 of the Code of Civil Procedure praying to set aside the fair and decretal order dated 7.2.2003 made in I.A.No.601 of 1997 in O.S.No.31 of 1997 by the Court of Principal District Munsif, Kuzhithurai.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the petitioner herein has filed the suit in O.S.No.31 of 1997 before the Court below for declaration of her title over the plaint 'A' schedule less 'B' schedule property and an injunction restraining the defendants from interfering with her possession over plaint 'A' schedule property and for recovery of possession of plaint 'B' schedule property from the first defendant on removal of trespass and of the basement put up therein at his cost.

3. Pending the said suit, the plaintiff filed a petition in I.A.No.601 of 1997 under Order 6 Rule 17 and Section 151 CPC praying to amend the plaint. In the affidavit filed in support of the said petition, the petitioner/plaintiff would submit that she got title and possession over plaint 'A' schedule property, as per the gift deed dated 29 .8.1986 executed in her favour by her father late Gabriel Nadar, who purchased the same under a sale deed dated 21.7.1112 ME for which the old survey number is 42 of Nattalam village; that after re-survey, the suit property within the specified boundaries and location actually fell within R.S.No.790/8, but, in the gift deed dated 29.8.1986, the re-survey number is mistakenly stated as 790/7

instead of 790/8 and when she paid the tax, she was issued the tax receipt for R.S.No.790 /7 based on the gift deed, but the property which is in her possession, as per the gift deed and for which she is paying the tax, is R.S. No.790/8; that R.S.No.790/7 lies West of the suit property, which belongs to Mary, D/o.Annammal Nadachi; that the mistake was found only when the Advocate-Commissioner measured the suit property; that the boundary and other descriptions are correct; that the gift deed authorises the donee to rectify the mistakes, if any, in survey number area etc.; that after the suit and after the first visit of the AdvocateCommissioner, the defendants forcibly trespassed on the entire plaint 'A' schedule property and on 14.5.1997, the defendants put up a new compound wall on the Northern side and therefore it has become necessary for the plaintiff to pray for recovery of possession of plaint 'A' schedule property which requires an amendment of the plaint since being an event after the suit.

4. This petition filed by the plaintiff was stiffly opposed by the respondents on ground that the plaintiff had made certain fundamental admissions in the plaint and by way of this amendment application she wants to get rid of the same that the nature of amendment is sure to alter the character of the suit and the cause of action in toto; that by this petition, plaintiff is trying to introduce a new cause of action not hitherto pleaded nor is understandable between the issues and such a strange and totally new case opposed to the suit already filed is shocking and never within the scope of the provisions of Order 6 Rule 17 CPC; that the material sought to be introduced under amendment is so voluminous and various that runs to 3 to 4 pages of typed materials and such a colossal introduction of matters even longer than the original pleadings is not within the scope of amendment; that the very fact that the plaintiff got knowledge of her so-called property only after the Commissioner's report, itself is enough to convince that the plaintiff has no possession as alleged and that the plaintiff has no cause of action and the suit is not maintainable. On such grounds, the respondents would pray to dismiss the above petition.

5. Based on the above pleadings, the Court below would conduct an enquiry, wherein no oral or documentary evidence was adduced. The Court below, having observed that the amendment sought to be made gives rise to a new cause of action for the suit and the market value also got enhanced from Rs.1,500/= to Rs.3,000/= and though the amendment of the survey number will not affect the suit proceedings but since the suit and cause of action also gets changed, would ultimately dismiss the said petition. Aggrieved, the plaintiff/petitioner has come forward to file the above petition on grounds as brought forth in the grounds of civil revision petition.

6. During the arguments, the learned counsel appearing on behalf of the petitioner besides tracing the facts and circumstances as brought forth in the petition before the lower Court on grounds of revision before this Court which are extracted supra, would also cite two judgments reported in -

(i) AIR 1968 (SC) 1165 (Nair Service Society v. K.C. Alexander)

(ii) AIR 1974 SC 1178 (Shikharchand V. D.J.P. Karini Sabha)

7. Insofar as the first judgment cited above is concerned, the Hon^{ble} Apex Court has held that-

It is a fixed principle of law that a suit must be tried on the original cause of action and this principle governs not only the trial of suits but also appeals. The appeal being a continuation of the suit new pleas are not considered. If circumstances change they can form the subject of some other proceedings but need not ordinarily be considered in the appeal. To this proposition there are a few exceptions. Some times, it happens that the original relief claimed becomes inappropriate, or the law changes affecting the rights of the parties. In such cases Courts may allow an amendment pleading the changed circumstances. Sometimes also the changed circumstances shorten litigation and then to avoid circuity of action the courts allow an amendment.

Held on facts that as it was not one of those cases in which there was likelihood of prolonged litigation after remand or in which a new case would begin, appellant was allowed to effect amendment so as to show to the Court that in addition to possession it had title. AIR 1966 Ker 286, Reversed; (1907) 6 Cal LJ 74 and AIR 1915 Cal 103 and AIR 1941 FC 5, Approved; (1934) 294 US 600 and AIR 1957 SC 875 and AIR 1957 SC 357 and AIR 1957 SC 363 and AIR 1967 SC 96, Rel. on; AIR 192 5 PC 169 and AIR 1938 PC 123 and AIR 1950 PC 68 and AIR 1922 PC 249 Dist^{ct}.

In the other judgment also the Hon^{ble} Apex Court in para No.11 of its judgment has held-

Ordinarily, a suit is tried in all its, stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a Court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties. (See Rai Charan v. Biswanath, AIR 1915 Cal 103).

8. On the contrary, the learned counsel appearing on behalf of the respondents, besides reporting that the second respondent died on 13.12.1998 and that no steps have been taken to implead his legal representatives and therefore, would advance his arguments only insofar as the first respondent is concerned in the above Civil Revision Petition only dwelling on the facts and circumstances and opposing the above Civil Revision Petition particularly on ground that the amendments sought for on the part of the petitioner is susceptible to change the cause of action and alter the structure of the suit, thus, ultimately, praying to dismiss the above Civil Revision Petition.

9. In consideration of the facts pleaded, having regard to

the materials placed on record and upon hearing the learned counsel for both, what could be assessed in the light of the back ground of the case projected on the part of the petitioner in the above Civil Revision Petition is that the petitioner has filed the suit for declaration and permanent injunction of the suit [A] schedule properties and for possession of the [B] schedule properties on grounds that she was already in possession of [A] schedule properties and further wanting to recover possession of the [B] schedule properties also as prayed for the recovery of possession. The case of the petitioner is that only after the surveying of the land by the Court Commissioner, she was able to understand that in the Gift Deed given by her father some anomaly has taken place regarding the survey numbers and since the very deed also recites that in case of change of survey number that was rectifiable and therefore on coming to know the above defects and further since the defendants have also taken forcible possession of the [A] schedule properties, after the measurement of the land by the Advocate Commissioner, wanting to effect necessary amendments into the plaint, has filed the application under Order VI, Rule 17 seeking to amend the application suitably.

10. Since it is Order VI, Rule 17 which is relevant for consideration, since dealing with the amendment of pleadings, it has become necessary on the part of this Court to extract the said provision of law and the same is extracted hereunder:

[17. Amendment of pleadings- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial[].

11. So far as the import and the real meaning of the Order VI, Rule 17 is concerned, the Court could at any stage allow either party to alter or amend pleadings in such manner and on such terms for the purpose of determining the real questions in controversy between the parties. However, it is added in the proviso to the above rule that if the Court is satisfied that in spite of exercise of all diligence, the party could not raise the matter before commencement of trial and in such event even after the commencement of trial, application for amendment could be allowed.

12. The main rule is in the affirmative and the proviso which is to serve as an exception to the main rule is negative in its approach and applicability since it states that unless the Court comes to the conclusion that in spite of due diligence the party could not raise the matter before commencement of trial, no application for amendment shall be allowed.

13. Needless to mention that the case in hand falls under the main rule, since no trial has commenced in the suit so far, which can be assessed from the very fact that the suit and the interlocutory application both have been filed in one and the same year i.e.1997 and it has taken six long years for a decision to be made in the above application, as a result of which, the matter is kept pending so far. Therefore, it could further be mentioned that the law on the subject of amendment is quite liberal in permitting the parties to alter or amend his pleadings.

14. However, the legal propositions held so far by the upper forums are well settled to the effect that such amendments though could be liberally allowed, the limitations are that the amendment sought to be introduced in the plaint should not have the tendency or effect to change the cause of action or alter the basic structure of the suit and these are the two cardinal principles which are to be taken care of and to be complied with by any party seeking amendment and hence it become necessary on the part of this Court to probe into on the given facts and circumstances whether in the case in hand such a condition is prevalent so as to either accept or dismiss the application filed by the petitioner/plaintiff before the lower Court and whether the lower Court is right in its decision in dismissing the amendment application filed by the petitioner.

15. From the two judgments cited on the part of the petitioner both by the Hon^{ble} Apex Court are innovative and pointed to the aspect that some times it happens that the original relief claimed becomes inappropriate. In such cases, Courts may allow amendment of pleadings in the change of circumstances and at times such circumstances also curtails multiplicities of litigations and hence the Court can allow amendment as has been held in the first judgment cited above. From the second judgment cited above, this Court is able to understand that for reason of subsequent change of circumstances, the pleadings become inappropriate and whereas it is necessary to take notice of the changed circumstances and in order to do complete justice between the parties, the amendment could be allowed.

16. In the case in hand it is not only the change of circumstance that is shown by the petitioner by reason of the change of survey numbers to the suit properties came to be revealed after the measurement of the same having been done by the Advocate Commissioner but also yet another circumstance to the effect that the "A" schedule suit properties are alleged to have been forcibly taken possession of by the defendants, after the inspection of the properties by the Advocate Commissioner and therefore, the petitioner would plead such change in the circumstances and hence it is necessary to amend the plaint and therefore, this Court is of the strong view that the trial Court, falling in line with the judicial thinking which has been brought forth, through the Hon^{ble} Apex Court's judgment cited above, could have permitted the petitioner to amend

V. KANAGARAJ, J

the plaint by allowing the application filed by her instead of dismissing the same on inconsistent and erroneous ground and hence the following order:

In result,

(i) the above Civil Revision Petition stands allowed.

(ii) The fair and decretal order dated 7.2.2003 made in I.A.

No. 60 1 of 1997 in O.S.No. 31 of 1997 by the Court of the Principal

District Munsif of Kuzhithurai is set aside.

(iii) In view of the long pending nature of the suit, the lower Court is issued with the direction to expedite the trial procedure in the above suit even dealing with the same out of turn so as to deliver the judgment within the close of the year 2004.

(iv) No costs.

Index: Yes

Internet: Yes

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To

The Principal District Munsif,
Kuzhithurai .

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